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FISCAL IMPACT REPORT

SPONSOR: King DATE TYPED: 3/12/03 HB 547/aHJC

SHORT TITLE: Criminal Sexual Penetration Time Limitations SB _____

ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 470.

SOURCES OF INFORMATION

Responses Received From
 Administrative Offices of the Courts
 Office of the Attorney General
 Corrections Department

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee has amended House Bill 547 to broaden the violations to which the bill would apply. In the underlying bill, the violation had to be of Subsection, D, E or F. With the HJC amendment, the violation can be of any provision of 30-9-11 NMSA 1978.

Synopsis of Original Bill

House Bill 547 tolls the statute of limitations for an alleged second, third or fourth degree sexual penetration when DNA evidence is available and a suspect has not been identified.

With this bill, the applicable time period for commencing a prosecution does not begin to to run until a DNA profile is matched with a suspect.

Significant Issues

This Act only applies to an alleged second, third or fourth degree sexual penetration for which the applicable time period for commencing a prosecution has not expired as of July 1, 2003. Thus, there is no concern with it being applied retroactively.

FISCAL IMPLICATIONS

There are little direct costs associated with HB 547. There are, however, secondary costs that will inevitably arise out of the ever-advancing developments in technology and DNA in the law enforcement arena. These costs will need to be absorbed by law enforcement agencies and the courts as a routine price of operation and remaining current and effective.

ADMINISTRATIVE IMPLICATIONS

Criminals who are caught years later, whose DNA match DNA taken from victims of these crimes, can be brought to justice. This may result in an increase in the number of individuals brought to trial and convicted. This means a slight increase in FTE and budget expenditures for such agencies as the Courts, the District Attorneys Office, the Public Defenders Department, Correctional institutes and parole and probation offices.

Such prosecutions will likely be costly due to the fact that much of the evidence will have aged and the case may not be as easily built as when it was fresh.

OTHER SUBSTANTIVE ISSUES

1. Under current law, the statute of limitations for second-degree criminal sexual penetration (CSP) is 6 years from the time the crime was committed. See NMSA 1978, § 30-1-8(A) (1997).
2. Under current law, the statute of limitations for third- or fourth-degree CSP is 5 years from the time the crime was committed. See § 30-1-8(B).
3. Under HB 547, the current statute of limitations for first-degree CSP would remain unchanged; there is no provision in HB 547 for tolling this statute of limitations.
4. Under current law, Section 30-1-8(G), there is no statute of limitations for "a first degree violent felony"; tolling would not therefore be necessary for first-degree CSP if this offense would qualify as a "violent" felony. But not all instances of first-degree CSP would necessarily qualify as "violent" felonies for which there is no statute of limitations. First-degree CSP can be either (a) sexual penetration perpetrated on a child under 13 years of age, or (b) sexual penetration by the use of force or coercion that results in great bodily harm or great mental anguish to the victim. NMSA 1978, § 30-9-11(C) (2001).
5. Section 30-1-8(G) does not expressly state what the statute of limitations is for a first-degree nonviolent felony, nor does Section 30-1-8(G) provide that there is no statute of limitations for first-degree nonviolent felonies. Under HB 547 and the

current Section 30-1-8, it appears to be possible for a suspect to argue that the offense for which he is being prosecuted is a first-degree nonviolent felony, that Section 30-1-8(G) is therefore inapplicable (and it is not clear under Section 30-1-8(G) what the statute of limitations would then be), and that HB 547 is inapplicable to toll the time for first-degree CSP.

It may be helpful to prevent this confusion by changing HB 547 so that it would toll the statute of limitations for first-degree CSP in the event that a statute of limitations is set by law. For instance, a new subsection could be added to HB 547 to provide: "When DNA evidence is available and a suspect has not been identified, and when Section 30-1-8 NMSA 1978 sets a time limitation for commencing prosecution for an alleged violation of Subsection C of Section 30-9-11 NMSA 1978, the applicable time period for commencing prosecution shall not begin to run until a DNA profile is matched with a suspect." Section 2 of SB 470 should then also be changed to add "C" after "Subsection" and before "D, E or F."

SJM/prr:yr